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Attorneys for Defendant

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION**

| | | |
|-------------------------------|---|--------------------------------------|
| DOUGLAS F. CARLSON, |) | No. C-06-01578 RMW |
| |) | |
| Plaintiff, |) | STIPULATION AND [] ORDER |
| |) | RE SUPPLEMENTAL COMPLAINT AND |
| v. |) | CASE MANAGEMENT ISSUES |
| |) | |
| UNITED STATES POSTAL SERVICE, |) | |
| |) | |
| Defendant. |) | |

Supplemental Complaint

Plaintiff Douglas F. Carlson ("Plaintiff") wishes to file a Second Supplemental Complaint, pursuant to Federal Rules of Civil Procedure, Rule 15. Defendant United States Postal Service ("Defendant") is willing to stipulate to such a filing under certain conditions.

First, by stipulating to the filing of this Second Supplemental Complaint, Defendant does not concede that the Second Supplemental Complaint meets the legal standards for such supplemental complaints, nor does Defendant admit the truth of any allegations of the Second Supplemental Complaint. Defendant does not waive any arguments regarding the appropriateness of any further amended or supplemental pleadings that Plaintiff may seek to file in this or any other action, and Defendant reserves the right to oppose any further efforts by Plaintiff to file supplemental or amended pleadings.

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1 Second, Defendant shall have 75 days from the date of the Court's order allowing the filing of
2 the Second Supplemental Complaint to answer, move, or otherwise respond to the Second
3 Supplemental Complaint.

4 Third, Defendant's stipulation to the filing of the Second Supplemental Complaint is
5 conditioned upon Plaintiff's agreement that the summary judgment motions for this case will be done in
6 stages, so that the initial summary judgment motion will not include all counts of the complaint as
7 supplemented. The parties agree to act in good faith to reach an agreement on a schedule for such
8 summary judgment motions and will seek the assistance of the Court if they cannot agree on a schedule.
9 Should some counts of the existing complaint or the Second Supplemental Complaint be dismissed
10 prior to the filing of any summary judgment motions (e.g., due to settlement of some claims), the
11 parties agree to reconsider whether the filing of summary judgment motions in stages is reasonably
12 necessary to the efficient disposition of the case.

13 Defendant acknowledges that Plaintiff may bring a motion for leave to supplement the
14 complaint further. To the extent that Plaintiff's motion, if any, relates to his allegations of retaliation
15 associated with service complaints, Defendant agrees that it will not argue that the events alleged in that
16 proposed supplement are barred because they took place prior to the filing of the Second Supplemental
17 Complaint. Defendant reserves the right to make any other arguments regarding the reasons why
18 amendments or supplements should not be allowed beyond the Second Supplemental Complaint.

19 **Settlement Conference**

20 The parties request that this case be referred to a Magistrate Judge for a settlement conference.
21 The parties anticipate that such a conference would focus on counts 1, 2A, 2B, and 3 of the existing
22 complaint, as well as any counts that the Defendant believes, but Plaintiff disagrees, are now moot.

23 **Case Management**

24 Because the parties wish to make another attempt at settling certain of the claims in this case
25 before filing summary judgment motions, the parties propose that a schedule for summary judgment
26 motions be set after Defendant files its answer to the Second Supplemental Complaint and after the
27 settlement conference proposed above.

28 //

1 IT IS SO STIPULATED.

2
3 DATED: May 2, 2008

Respectfully submitted,

JOSEPH P. RUSSONIELLO
United States Attorney

/s/ Claire T. Cormier

CLAIRE T. CORMIER
Assistant United States Attorney

7
8 Dated: May ___, 2008

DOUGLAS F. CARLSON
Plaintiff

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10 ~~XXXXXX~~ **PROPOSED ORDER**

11 Upon stipulation of the parties and good cause appearing, IT IS HEREBY ORDERED THAT:

- 12 1. Plaintiff may file the Second Supplemental Complaint, attached hereto as Exhibit A.
- 13 2. Defendant's answer or other response to the Second Supplemental Complaint will be
- 14 due 75 days after the date of this Order.
- 15 3. The parties will comply with the conditions stated in the stipulation, above, regarding the
- 16 filing of the Second Supplemental Complaint.
- 17 4. This case shall be referred to a United States Magistrate Judge for a settlement
- 18 conference.
- 19 5. The motions for summary judgment in this case shall be done in stages, so that the initial
- 20 motions will not include all claims unless both parties agree or the Court so orders. The
- 21 parties shall act in good faith to attempt to agree on a schedule for such motions and will
- 22 promptly notify the Court if they are unable to agree on a schedule. The first motions
- 23 will be scheduled after Defendant's answer to the Second Supplemental Complaint, and
- 24 after the settlement conference.

25 IT IS SO ORDERED.

26 Dated: May 14, 2008

Ronald M. Whyte

Ronald M. Whyte
United States District Court Judge